

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Economic Impact of Rulemaking on Small Business in Maine as required under the Maine Administrative Procedures Act, 5 MRS §8052, sub-§5-A

Rule chapter # and name: Chapter 882, Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products

Posting date: June 17, 2010

1. **Could the proposed rule have an adverse impact on businesses that have 20 or fewer employees?**
Possibly.
2. **What are the types and estimated numbers of small businesses likely to be affected by the rule?**
The proposed rule applies to manufacturers of children's products that contain the priority chemical bisphenol A. The department anticipates that the fiscal impacts of the proposed rule will fall mainly on manufacturers of reusable food or beverage containers containing bisphenol A, which will be subject to a sales prohibition beginning January 1, 2012, and, to a lesser extent, on manufacturers of bisphenol A-containing toys and tableware, for which the rule requires reporting, and baby food and infant formula sold in containers containing bisphenol A, for which the rule requires reporting and an alternatives assessment. The department conducted a search for businesses in Maine that have 20 or fewer employees and manufacture reusable food and beverage containers, toys, tableware, infant formula or baby food in bisphenol-A containing packaging and did not identify any such manufacturers. The department provided rulemaking notice to the relevant trade associations and the usual public notification and no manufacturers of this type of product stepped forward during the rulemaking process. Thus the department estimates that zero small manufacturers in Maine will be affected.

Retailers are exempt from the reporting provisions of the rule. However, the sales prohibition could adversely affect retailers who are not able to liquidate stock of the prohibited products prior to the deadline, by leaving them with unsalable merchandise. The department does not expect the implementation of the proposed sales prohibition to pose any significant fiscal consequences for retailers. The department's experience with the administration of product sales bans under Maine's mercury product laws suggest that compliance with those bans has not posed a financial hardship for retailers and wholesalers. In addition, the department heard from several hundred consumers during the public comment period who urged the department to move forward with the proposal without delay.

3. **What are the projected reporting, record-keeping and other administrative costs of complying with the proposed rule? What types of professional skills are needed to prepare required reports or records?**
Manufacturers of toys, tableware, infant formula or baby food in bisphenol-A containing packaging have reporting requirements under the rule. Additionally, manufacturers of infant formula and baby food will be required to perform an alternatives assessment. The professional skills required for preparing the basic report will include knowledge of the materials and products used to manufacture the children's product and basic computer competencies for filing the reports. To perform an alternatives assessment, manufacturers will need skills in researching and analyzing literature on chemicals, chemical alternatives and toxicology; an ability to communicate with suppliers regarding properties of the packaging of the manufacturer's product; and ability to conduct an analysis of potential hazards of alternative chemicals, such as the Green Screen.
4. **Describe the probable economic impact of rule compliance on affected small businesses.** The department estimates the cost of generating the basic report to be marginal as manufacturers should have the information and abilities to complete the report in-house, and not likely to exceed \$100 per product. The alternatives assessment could range in price from \$25,000 to \$250,000, based on alternatives assessments conducted by the department in the past, however this is a one-time cost and can be borne collectively by all affected manufacturers, large and small. Costs to small retailers of unsalable merchandise would depend on how much product each small retailer has on the shelves at the time the rule goes into effect. However, retailers

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have ample lead time to move merchandise from their shelves prior to the effective date of the sales prohibition and should be able to minimize or eliminate costs of unsalable merchandise altogether, so the department estimates this cost to be minimal, not exceeding \$250 per retailer, assuming a maximum number of 50 bisphenol A-containing reusable food and beverage containers on shelves at the time the prohibition goes into effect, at \$5 per container.

5. **Are there any less intrusive or less costly alternative methods of achieving the purposes of the proposed rule?** No. Section 3(E) of 06-096 Chapter 880 Regulation of Chemical Use in Children's Products gives manufacturers of children's products several options for complying with the requirement to disclose information on their use of priority chemicals, including reliance on information submitted by a trade association, chemical manufacturer or other third party. Further, Chapter 880 section 3(C) authorizes the Commissioner of Environmental Protection to waive the disclosure of information on uses of a chemical that are minor in volume. Further, 38 MRSA §16- includes a number of provisions that will help prevent negative consequences to retailers, including a requirement that manufacturers and distributors of bisphenol A-containing reusable food and beverage containers notify retailers and wholesalers of the sales prohibition, a requirement that the board specify an effective date for the sales prohibition of at least 12 months after the notice of proposed rule is published, in part to give retailers and wholesalers time to sell-through their inventory of bisphenol A containing reusable containers; and a provision exempting retailers from enforcement action unless they knowingly sell a product subject to the ban after having been notified of the ban by the manufacturer, distributor or the State.